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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/692,893

Applicant(s)

SAVAGE, KENT W.

Examiner

david shay

Art Unit

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 9, 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23, 25, 57-67 and 69-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25, 57-67 and 69-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant argues that the drawing objections are improper. The examiner must respectfully disagree. With reference to the illustrations of Figures 4 and 5, these are illustrations of **portions** of the device, as shown in Figure 2, as can be easily seen from the originally filed disclosure at the paragraph bridging pages 5 and 6: "Referring to FIG. 2, a light therapy unit 30 according to one implementation of the present disclosure is shown in an open position. A generally rectangular case 32 includes a recess 33 having a lens 34 therein. A light source 50 (shown in FIG. 4) is disposed in the back portion 31 of case 32 behind the lens 34. Case 32 rests in an upright position on a base 36, held in place by a protrusion on the base (not shown). Below lens 34 is a display 38 for depicting messages and data during use. On either side of display 38 are data input buttons 40-43 for providing data to the unit 30, as will be discussed in detail hereafter. Between the display 38 and the lens 34 are two buttons 44 and 45, for the on/off switch and other main menu selections." Thus clearly the illustrations at Figures 4 and 5 are merely the light source, as is readily apparent from the first sentences of each of the second and third full paragraphs on page 6: "Looking at FIG. 4, a light source 50 is shown." and "FIG. 5 shows the light source 50 from a side view." Clearly these are simply illustrations of the source of Figure 2, omitting the lens, 34, which is not illustrated with cross-hatching that indicates transparency. There is no illustration of the entirety of the device "with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through s light emission aperture..." Thus applicant's arguments are not convincing. Similarly not convincing is the assertion the element 22 in figure 1 is involved in downloading software. The term "data" appears numerous times throughout the originally filed disclosure, always in reference to the user see e.g. page 9 of the originally filed disclosure). There is no indication that

element 22 constitutes any connection with the internet or any other external data source other than the user. Thus this argument is not convincing. Further regarding the illustration of Figure 8, once again, as with the illustration of Figure 4, the illustration of Figure 8 is a depiction of the device of Figure 7 “with the lens 76 removed to more clearly show the matrix of LEDs 80” (see the originally filed disclosure, the first sentence of the paragraph bridging pages 8 and 9), wherein in Figure 7, the entire device is shown wherein “lens 76 is positioned in front of the matrix 80 to protect the source and to diffuse the intensity of the light” (see the originally filed disclosure, page 8, fourth sentence of the first full paragraph, emphasis added). Also note that individual LEDs are **not visible** in Figure 7 when the entire device is assembled and the lens 76 is in place. Thus the assertion that the LEDs are visible through the lens does not bear out applicant’s assertion that they are somehow visible, despite not being shown in the drawing.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “data input device enables software to be downloaded to the data processor from an external source”; “a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “portable housing at least partially containing the light source”; “window being formed through the front member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicant argues that none of the previous claim revisions constitute new matter. The examiner cannot agree. For example, claim 1 has been amended to include the term “that illuminate the ocular area of a subject at an intensity of less than 2,500 lux” this term is problematic for several reasons. Firstly the term “less than 2,500 lux” includes values of e.g. 2450 lux, a value which is clearly not taught by the originally filed disclosure. Similarly, the originally filed disclosure is completely silent with regard to an “ocular area”. Thus the assertion that intensities of 1,00 lux to 1,00 lux are supported is noted, however, this still does not address the issue of the intensity provided to “an ocular area” which phrase is still absent from the originally filed disclosure, and the absence of which applicant has steadfastly failed to address.

Since, even assuming *arguendo* the term “ocular area” were able to be defined by the originally filed disclosure with sufficient precision to be definite, the fact remains that there is physical variation between humans in the “ocular area” and thus the amount of light, as well as the distance the source is from the “ocular area” will affect the intensity falling on the ocular area. Similarly, the arguments drawn to the CCFL embodiment producing levels of illumination below 2,500 lux are entirely unsupported by the originally filed disclosure, as the only embodiment which contemplates such intensities is the embodiment described at paragraph [0040] which is clearly drawn to the LED embodiment.

With regard to the arguments directed towards Figures 4, 5, and 8 (which are illustrations of the devices of Figures 2 and 7, respectively in a non-operative form as set forth above), these are not convincing for the same reasons similar assertions were unconvincing with respect to the drawings.

As for the assertion that paragraphs [0042] and [0030], provide support for “the processor is programmed to control the amount of light...” this is wholly unfounded with regard to the objected to phrase. Paragraph [0042] merely notes that the processor may suggest the times to use the device and the amount of light usage, there is not hint of the processor “controlling” these aspects. While applicant asserts that paragraph [0030] explains that the inverter operates under the control of the processor, this disclosure, if contained on paragraph [0030] has eluded the examiner. Applicant is respectfully requested to clearly explain exactly how the recitation “On the underside of circuit board 58 is an inverter 60 and processor 62...” discloses control of the inverter by the processor (or even any electrical connection thereto whatsoever).

In short, there is no support whatsoever for the LEDs being visible from the exterior of the housing of the complete device. Simply because the description at paragraph [0040] states that the absence of the lens “more clearly show the matrix of LEDs” does not imply that they are visible with the lens in place, as claimed. In fact were they completely obscured by an opaque lens, the absence of such a lens would still “more clearly show the matrix of LEDs”

Regarding applicant’s arguments concerning the rejections under 35 U.S.C. 112, first paragraph, these arguments are not convincing for the same reasons as the arguments directed to the new matter objection set forth above.

Concerning the indefiniteness rejections, that the term “ocular area” would be understood by one of ordinary skill in the art as meaning “the area in which the eyes of the subject are located” (see the instant remarks, fourth paragraph on page 19). While this assertion is noted, the examiner respectfully notes that there is no evidence of record to support his assertion, as arguments of counsel cannot take the place of evidence (see MPEP 716.01(c)(II) and MPEP 2145). Further even if the statement by counsel could be elevated to the level of evidence, this statement does little to remedy the indefiniteness, as “the area in which the eyes of the subject are located could be the area of the subject’s face, the area of the subject’s body, or the area of the city in which the subject currently resides. Thus this argument is not convincing. With regard to the limitation of the lens, applicant argues that “[N]owhere does not (sic, the) specification of the above-referenced application lead one of ordinary skill in the art to believe that a diffusing lens is an essential element of a light therapy apparatus” (see the instant response, page 19, last full paragraph). The examiner must respectfully disagree. Throughout the specification the all embodiments of the complete device are described as having a lens. All

illustrations of the device without the lens are described as showing the device with the lens removed. – none are put forth as an alternate embodiment of the device. From this one of ordinary skill in the art would understand that the lens is a necessary component of the device. Thus this argument is not convincing. The argument regarding the indefiniteness rejection of claims 65 and 66 is not understood by the examiner

With regard to Whitcher, applicant argues that the reference does not disclose a light source visible from the exterior of the housing. The examiner must respectfully disagree, since the claims must be read in light of the disclosure, and since all disclosures relative to the complete device teach a diffusing lens in front of the light sources, all of which are illustrated to show that the individual sources are obscured from vision, the claim limitation must mean that either 1) the source is visible in that the light therefrom can be visually perceived, or 2) that, if the devices interposed the user and the light source are removed (as in the Figures argued by applicant as illustrating this feature), then the sources are visible, both of which are manifestly fulfilled by Whitcher. Further applicant argues that there is no disclosure in Whitcher that the screen assembly is “any brighter than a typical VGA monitor” (see the instant response the fourth full paragraph on page 21). The examiner must respectfully disagree. As noted by applicant the device of Whitcher is described as providing “full vivid color *even* in dimly lit environments” (see the second full paragraph on page 21 of the instant response). The qualifier “even” clearly indicates to one of ordinary skill in the art that this condition is also satisfied in brightly lit environments, which would require a substantially brighter output than that of a typical VGA monitor. Thus this argument is not convincing. Applicant further argues that the limitation that the source is “configured to emit light primarily having a blue wavelength at an

intensity suitable for light therapy” defines over Whitcher. However, as applicant has provided no information whatsoever as to how the CCFLs are “configured to emit light primarily having a blue wavelength” they must inherently produce this light, else applicant’s specification is fatally defective, and this claim is not enabled. Regardless of this, however, there are many conditions under which the device of Whitcher would produce light that has a primarily blue wavelength. For example if the computer of Whitcher were to crash and display what is commonly known in the art as “the blue screen of death” (that screen indicating a fatal operating system error for the Windows TM operating system), this would constitute light that “primarily has a blue wavelength” within the broadest reasonable interpretation of the term. This argument must fail.

With regard to the portability of exit signs, the examiner cannot agree with applicant’s assessment that since the EXIT sign is attached to the building, it is not portable. It is well understood that EXIT signs are transported as such to building sites, and subsequently installed, thus EXIT signs are therefore portable. The issue of the viewability of the source has been treated above. Further applicant argues that there is no teaching that the traffic light embodiment of Marsh is “configured to be placed on a generally horizontal surface in an upright position. The examiner must respectfully disagree. The instant device when “upright” is tilted at an angle, as the traffic light of Marsh would be when placed on a horizontal surface. However, the claim requires only a “*generally* horizontal surface” which language includes surfaces tilted at an angle complementary to the angle of the bottom portion of a standard traffic light within the broadest reasonable interpretation of such term. The issue of the viewability of the source has been treated above. With regard to the timer, the examiner respectfully notes that traffic lights

are timed, and that the timing of the lights can be set from the control box operating the light either automatically or manually. Concerning claim 56, due to the breadth of the term “ocular area” as defined by applicant in the instant response, as discussed above, the device of Marsh is considered to fulfill the intensity requirements of the claim for the appropriately defined “ocular area”. Thus this argument is not convincing.

Regarding Penderson et al, applicant argues that the device of Penderson et al does not illuminate an emission area at an intensity of less than 2,500 lux. The examiner notes that the term “emission area” is nowhere defined in the originally filed disclosure. And the examiner respectfully submits that the device of Penderson et al, emitting 2,500 lux at the source, will illuminate any emission area more than 12 inches from the output of the device with less than 2,500 lux. With regard to claims 83 and 93, as already explained, the vehicle mounted version of the device would allow the pivoting of the device beneath the dashboard and thus the dashboard of the vehicle would serve as the “cover” or “multi-functional element” respectively.

Regarding Yano et al, applicant also argues that Yano et al do not disclose a plurality of light emitting elements. However, as the term “light emitting elements” lacks antecedent basis in the originally filed disclosure, the term must be given its broadest reasonable interpretation when applied to the prior art. As already explicitly set forth, each pixel of the LCD of Yano is considered a “light emitting element” and as such is visible from the exterior of the device (else no picture would be able to be seen). Applicant has refused to address this interpretation of the claim language set forth by the examiner, thus the arguments set forth regarding this limitation are not convincing. With regard to the capability of emitting light which is primarily in a blue wavelength, the examiner respectfully submits that many, many movies exhibit scenes including

sky and/or sea, which are primarily of a blue wavelength. There is no requirement for the time duration of the emission of the primarily blue wavelength. The fact that the device of Yano can produce an entirely blue screen constitutes a device “configured to emit light primarily having a primarily blue wavelength” as claimed. It is further argued that Yano does not teach the light emitted thereby as being suitable for “ocular light therapy”. However, applicant has provided no parameters associated with such therapy, other than that the light be directed to the eyes, which the light of the Yano et al device is clearly intended to be. Further, as all structural limitations of the claim are met by Yano et al, if there is some aspect of Yano et al that renders it inappropriate for ocular light therapy, then the instant claims are incomplete. Lastly, the intensities suitable for ocular light therapy are discussed above with respect to Witcher, and these arguments are hereby repeated. Thus this argument is not convincing.

Concerning the rejection under 35 USC 103, applicant argues that the device of Penderson et al when mounted in and automobile would not fulfill the claim language. The examiner must respectfully disagree, for the reasons set forth above with regard to Penderson. Further, as the dashboard would serve as the “cover” or “multi-functional element” as set forth above, applicant’s assertion that the dashboard could not be considered a cover are noted, but lacking any underlying rationale therefor, this argument is not convincing.

With regard to the combination of Witcher et al and Arano et al and the HP User’s guide, applicant argues that one of ordinary skill in the art would have no reason to combine these references because one of ordinary skill in the art would not look to the teachings of laptops or other portable electronic devices. This argument is not convincing. All these types of devices have optical outputs which are subject to damage during transport (which is known to

occur with portable devices) and thus the problems associated with such damage are common across these types of devices. Applicant has presented no compelling rationale to the contrary, thus this argument is not convincing.

With regard to the combination of Whitcher et al and Terman, applicant argues that the only suitable combination of the two would involve the updating of the computer system on Terman using the device of Whitcher et al. The examiner cannot agree. Terman does not propose setting illumination levels to that of the sun (e.g. 100,000 lux for a sunny day). Instead Terman et al specifically discuss capping the illuminance levels at 1,500 lux, for example (see column 7, lines 16-25). Thus applicant's assertion that providing the desired illuminance levels via a computer monitor are not convincing.

As to the combination of Penderson et al and March, applicant argues that the combination of the devices of Penderson et al and Marsh do not teach light suitable for ocular light therapy are not convincing for the reasons set forth above. Further applicant argues that Penderson et al teaches away from using fluorescent bulbs, citing column 1, lines 21-23 of Penderson et al. The examiner respectfully submits that applicant has misconstrued the teachings of Penderson et al. As can readily be seen from the immediately preceding text in Penderson et al, which refers to "relatively large devices which are floor or desk mountable", thus it is clearly relatively large devices which Penderson et al teach away from, not devices which are portable (e.g. flashlights, as taught by Marsh) which simply happen to employ fluorescent bulbs as the light source. Thus this argument is not convincing.

The examiner has taken official notice of the use of clamshell-type Cases, which are notorious in the art for smaller Computers, e.g. lap tops or handhelds such as the HP Jornada

720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display; and to include an inverter, since these are needed for running CCFLs from DC sources. Applicant has not challenged the examiner's holding, thus this is considered to be admitted prior art (MPEP 2144.03).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The amendment filed September 23, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "that illuminate the ocular area of a subject at an intensity of less than 2,500 lux"; "that illuminate the ocular area of a subject at an intensity of less than 2,500 lux ...wherein the light output device comprises a plurality of cold cathode fluorescent lamp (CCFL) tubes"; "A light therapy apparatus ...comprising...a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture"; "the processor is programmed to control the amount of light"; "the data processor is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn"; "A light therapy apparatus ...comprising...a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing"; "A light therapy apparatus ...comprising...portable housing at least partially containing the light source"; "A light therapy apparatus ...comprising...window being formed through the front member through

which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing”; “A light therapy apparatus ...comprising...at least one light source carried by the portable housing, powered by the power supply, visible from an exterior housing...”.

Claims 1-23, 25, 57-67, and 69-89 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure is silent on “hardware in the data processor” and “that illuminate the ocular area of a subject at an intensity of less than 2,500 lux at a distance suitable for ocular light therapy”; “that illuminate the ocular area of a subject at an intensity of less than 2,500 lux ...wherein the light output device comprises a plurality of cold cathode fluorescent lamp (CCFL) tubes”; “A light therapy apparatus ...comprising...a portable housing carrying the power supply and the light source, with the plurality of cold cathode fluorescent lamp (CCFL) tubes visible from an exterior of the portable housing through a light emission aperture”; “the processor is programmed to control the amount of light”; “the data input device enables software to be downloaded to the data processor from an external source”; “A light therapy apparatus ...comprising...a light emission window through which the plurality of light emitting diodes of the light emission area of the light source is visible from an exterior of the portable housing”; “the data processor is programmed to reduce or increase the therapeutic ocular light to simulate gradually decreasing light at dusk or gradually increasing light at dawn”; “A light therapy apparatus ...comprising...portable housing at least partially containing the light source”; “A light therapy apparatus ...comprising...window being formed through the front

member through which the plurality of light emitting elements are visibly discrete from an exterior of the portable housing”; and “A light therapy apparatus ...comprising...at least one light source carried by the portable housing, powered by the power supply, visible from an exterior housing...”.

Claims 1-20, 56-67, 69-82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 is indefinite because the precise meaning of the term “ocular area” is unclear. Claim 1 is further indefinite because the term “less than about 2,500 lux is indefinite, because there is nothing in the originally filed disclosure to indicate the divergence of the sources which, in combination with the divergence of the light provided by the diffusing lens, will produce “less than 2,500 lux” given the various source intensities discussed with respect to CCFLs, it is noted that no source intensities are discussed with respect to other illumination sources. Claims 1-9, 11-20, 21-23, 25, 56, 58-67, and 69-97 are incomplete, as they do not include the diffusing lens, which is a necessary part of the device that affects the exposure intensity. Claim 56 is additionally indefinite because it is unclear whether the configuration of the device is such that the lens is included or not. For the purposes of examination, this claim will be interpreted as requiring the lens, since this is clearly the device referred to in the specification. Claims 65 and 66 recite limitations to the input device “e.g. that the data input device comprises at least one button” (emphasis in original), however, applicant has failed to indicate what type of input device is excluded by this recitation, since, as stated previously, any type of input device can input data pertaining to the subject. Thus the exact “configuration” of the input device that would

prevent the input of e.g. subject data, is unclear. Claims 69 and 82 are further indefinite because the manner in which “input device” 22 could be construed to enable “software to be downloaded to the data processor from an external source”.

Claims 87-89 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Whitcher.

See figure 3 and column 1, line 31 to column 6, line 23, wherein the screen is the source.

Claims 1-5, 11, 13, 18-21, and 57 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marsh.

See figures 3-18; column 1, line 54 to column 6, line 60; column 8, line 65 to column 12, line 22; and column 12, line 60 to column 14, line 39, wherein e.g. the diameter of a single output device is considered the “peripheral dimension”.

Claims 1, 7-12, 19, 20, 56-62, 64-67, 70-72, 74-78, 83-86, and 93-95 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Pederson et al.

Wherein the vehicle mounted device could be pivoted under the vehicle dashboard.

Claims 83-88, and 93-97 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Yano et al.

See figures 14A to 22C and column 8, line 3 to column 18, line 20, wherein each pixel of the display is a light emitting element.

Claims 1, 7-12, 19, 20, 56-62, 64-67, 70-73, 83-89, and 93-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Brainard. Pederson et al teach a device such as claimed which can be mounted in a vehicle. Brainard teaches that levels of light much less than 2,500 lux are effective to produce therapeutic effects. It would

have been obvious to the artisan of ordinary skill provide a lower intensity light, since this can still provide therapeutic effects, as taught by Brainard, and to mount the device in a vehicle with a dash board mounted cigarette lighter, such as a 1969 Camaro Z-1, and pivot the device under the dashboard when not in use, so as to prevent theft, and to employ light of primarily a blue wavelength, since this is not critical; is well within the skill of one having ordinary skill in the art; provides no unexpected result; and provides beneficial therapeutic effects, and in any case to configure the device to have a maximum weight of four pounds, since Penderson emphasizes the desirability of minimizing the weight of the device for better portability, thus producing a device such as claimed.

Claims 1, 2, 4-6, and 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Arao et al, HP Jornada 700 Series Handheld PC Users Guide and the admitted prior art that inverters are needed for running CCFLs from DC sources. Whitcher et al teach a handheld device which outputs a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL, wherein each pixel is considered a light source. Arao et al teach the use of multiple CCFLs and reflectors in a light output module. It would have been obvious to the artisan of ordinary skill to employ the output device of Arao et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the output device and since the output device of Arao et al is intended to be employed in this type of device (see Figures 25A-C) or, to employ the device of Whitcher et al as the driver for the output of Arao et al, since Arao et al give no details of the driver device shown in Figures 25A-C and since the device of Whitcher et al is shock resistant and versatile, and in either case to include an inverter, since these are needed for running CCFLs from DC sources, official notice of which has already

been taken, to include means for receiving data from external sources, such as disk drives, since these are notorious devices routinely included in computers, official notice of which is hereby taken, and to employ standard energy saving features, such as a selectable level of screen illumination and a timer that turns off the display after a predetermined time of inactivity, since this conserves battery power, as shown by HP Jornada 700 Series Handheld PC Users Guide, which display controlling will require controlling the inverter, thus producing a device such as claimed.

Claims 1-3, 12-19, 56-67, and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Terman et al and the admitted prior art that employing* a clamshell-type case, is notorious in the art for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display. Whitcher et al teach a handheld device which outputs a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming, lighting, and control devices of Terman et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the programming or peripherals and to include multiple CCFLs, since this would provide more even illumination of the screen, or to employ the device of Whitcher et al as the driver for the output of Terman et al, since Terman et al teach that any type of driver device can be used and since the device of Whitcher et al is shock resistant and versatile, wherein stopping or modifying the power from the inverter is considered “controlling the inverter”; and in either case to employ a clamshell-type case, as these are notorious in the art

for smaller computers, e.g. lap tops or handhelds such as the HP Jornada 720, as they protect the display and keep the keyboard dry and clean during periods when the device is not being employed for input or display, official notice of which has already been taken, thus producing a device such as claimed.

Claims 1-6, 13-17, 21-23, 25, 73-72, 80-82, and 90-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al in combination with Marsh. Pederson et al teach a handheld device which emits light suitable for ocular therapy using LEDs as tile illumination source. Marsh teaches the use of an inverter and multiple CCFLs and reflectors in place of LEDs in a light output module. It would have been obvious to the artisan of ordinary skill to employ the inverter and CCFLs of Marsh in the device of Pederson et al, since these provide more uniform brightness, as taught by Marsh, or alternatively, to employ the portable devices taught by Marsh for therapy, as taught by Pederson et al, since this would provide a beneficial medical effect, and in either case to employ parabolic reflectors with the CCFLs at the focus thereof, since this is not critical; is well within the skill of one having ordinary skill in the art; provides no unexpected result; and provides maximum transfer of the light in the desired direction, to configure the device to have a maximum weight of four pounds, since this is not critical; is well within the skill of one having ordinary skill in the art, as the originally filed disclosure provides no particular materials, arrangements, or devices which enable the achievement of such a weight; and provides no unexpected result, and because Pederson et al state that the weight should be minimized, thus producing a device such as claimed.

Claims 63 and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pederson et al as applied to claims 1, 7-12, 19, 20, 56-62, 64-67, 70-78, 83-86, and 93-95, and

further in combination with Terman et al. Terman et al teach the use of a computer to control lighting as claimed. It would have been obvious to the artisan of ordinary skill to employ the programming and control devices of Terman et al in the combined device of Pederson et al and Marsh, since these provide lighting which is appropriate to treat the conditions sought to be treated by Pederson et al, thus producing a device such as claimed.

Applicant's arguments filed April 9, 2010 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson, can be reached on Monday through Friday from 7:00 a.m. to 3:30

p.m. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/
Primary Examiner, Art Unit 3769